

## **COMMITTEE ON LANDS & BUILDINGS**

**November 21, 2005**

**Immediately Following Spcl. Cmte. on Solid Waste**

Chairman Thibault called the meeting to order.

The Clerk called the roll.

Present: Aldermen Thibault, Roy, Gatsas, Osborne, Porter

Messrs.: P. Borek, K. Clougherty, S. Hamilton, K. Dillon

Discussion regarding the sale of the Center of New Hampshire Parking Garage.

Paul Borek, Economic Development Director, stated we wanted to come before you today and first of all recap a bit of the process if you remember JPA Corporation expressed an interest in purchasing the garage and funds were authorized and an appraisal has been conducted. We did meet with JPA to discuss their interest in the property and they were not prepared to make an offer at that time specific to the purchase of the garage. They did express an interest in seeking authorization to conduct a due diligence investigation. We are requesting an opportunity to come before the Committee today to seek authorization to initiate the surplus property declaration process and request the opportunity to get that process rolling as well as authorization to enter into negotiations with JPA and authorization for JPA to conduct a physical analysis of the garage under the supervision of the Highway Department.

Alderman Osborne asked do we have anything back from the Assessor's Office now on our side on what this is worth.

Mr. Borek answered we have an appraisal from Bramley Associates. As I understand it the normal process has been that we would receive the appraisal and also seek a proposal to purchase from the potential buyer and evaluate the purchase proposal in conjunction with the appraiser and perhaps enter into negotiations and make our best effort to get a solid price and bring those materials to the Committee. We did just this afternoon receive a purchase offer but it hasn't been evaluated in detail.

Alderman Osborne asked do we have any figures at all from the City as far as the valuation price.

Kevin Clougherty, Finance Officer, stated as Paul explained the normal process is for an independent appraisal to be commissioned, which we have done. Once we are in receipt of that, the staff receives information from the other party, which includes the Assessors. We evaluate those proposals and bring that back to the Committee. We had hoped that we would be in a position to do that tonight but as Paul explained we didn't get the information back from JPA until this afternoon so as a staff we haven't had a chance to even meet and talk about what their proposal is. In the interest of trying to move the project forward, Paul's letter says that we need to do the surplus property piece, and allowing them to continue to do their borings. We will meet with them...as a staff we will get together, review the appraisal, review with the Assessors the information that was received from JPA and then we will make a recommendation to you as soon as possible. We have talked to JPA and we have scheduled some meetings for next week with them so we can get a better understanding of what their proposal is.

Alderman Osborne asked so you are working together.

Mr. Clougherty answered yes it all comes together as a process.

Alderman Gatsas asked can I get a copy of this document that you received and the rest of the members of this Committee also.

Mr. Borek answered I apologize, Alderman. Those were delivered today.

Alderman Gatsas asked delivered where.

Mr. Borek answered I believe the Clerk's Office was going to try to get it to the Alderman's homes. We should have put copies at your seats.

Deputy City Clerk Johnson stated if the Clerk can just add because the ordinance does require a specific process, which is not what was just outlined. I just want to make sure for the record that it is understood that in addition to declaring it surplus we are required to receive a report from the Planning Department and we are required to receive a report from the Assessors and the Assessors, as an independent authority, also must review it and submit an opinion of value by ordinance.

Mr. Clougherty responded I agree with the Clerk on that.

Deputy City Clerk Johnson stated certainly you can have other staff reviewing it, but we do need separate reports from them and the Tax Collector as well.

Mr. Clougherty replied right. As part of the surplus property that is what we are asking tonight – to start that process. As I understand it, it does not commit the Board to going forward with that, it just starts it so that when and if you want to liquidate the property you can do that. Just to remind you, there is the deadline of January 31 that JPA has to meet in order to get this project completed and take advantage of the federal tax credits that they are envisioning. Again, as part of Paul's letter that is what we are requesting – to have that surplus property piece start.

Alderman Roy stated I was at City Hall a little too much today and I didn't go home to get my courier package. Reading this very briefly, you are looking for authorization for JPA to do some due diligence to help move this process along – authorization to let JPA go ahead and put together an acceptable purchase price. Should that be more of a sales offer price instead of a purchase price?

Mr. Clougherty responded right. I think they are trying to move the process along as fast as they can. They have submitted something as Paul said today and we haven't had a chance to look at it. We will look at that tomorrow and it is an iterative process. Usually what happens is we will get the appraisal and the first round of information from the purchaser and then we will take a look at trying to get some additional information. It is an iterative process over a period of a couple of weeks or so.

Alderman Roy stated just to get something on the floor I would like to move to authorize the initiation of the surplus property declaration process and seek the recommendations per statute from the departments here in the City. That is my first motion.

Alderman Porter asked are we in discussion right now. As I recall and it was verified by Deputy Solicitor Arnold, part of the ordinance was that the Assessors would be involved unless it was determined I guess by the Assessors that an outside appraisal would be more appropriate. I think in this case given the nature of the property since an outside appraisal has already been done it is not to leave the Assessors out of the loop but I think that we have gone beyond the need for the Assessors to give a report. If they are involved in the review that is one thing but I think the ordinance has been met in that regard since an outside appraisal has already been done. What is your motion, Alderman?

Alderman Roy stated my three motions will follow the letter that is front of us. Authorization to initiate the surplus property declaration, which if the report from

the Assessor's simply stated that an outside appraisal has been done and we have no interest...

Alderman Porter stated I will second that.

Alderman Osborne asked what is the assessed value on this property now.

Mr. Clougherty stated one of the things we have tried to do, Alderman, in these processes is to try to keep the discussion about the numbers and values to when the recommendation is finalized so as not to somehow jeopardize our negotiating position.

Alderman Osborne asked isn't this public record.

Mr. Clougherty answered it is public information.

Alderman Osborne asked do you want to go forward or do you want to hold on that.

Steve Hamilton, Board of Assessors, stated the assessed value is clearly a matter of public record and it is currently \$6,407,800.

Alderman Gatsas stated if you can indulge me I have a few questions. Are either one of you aware...are there any Board members that have seen the appraisal?

Mr. Clougherty responded no there are not any Board members who have seen the appraisal and that is the normal process. Usually the Committee is provided a copy of the appraisal and the appraiser comes and explains his information at the time that a staff recommendation is made and at which time we are able to formulate a response to a written proposal that we have in hand. As I said earlier, we had hoped that that would be today but we didn't receive anything in writing from JPA until this afternoon and we just haven't had time to review it.

Alderman Gatsas replied so you are asking us to follow something in an out of procedure purpose because...from when we did this before because not knowing what the appraisal is you are asking us to declare it surplus so that members outside of this Board can negotiate a contract and come before us and say you need to make a decision tonight because we have to close this by the 31<sup>st</sup>. I think it is unreasonable that you ask this Board to declare something surplus without us seeing an appraisal that the City has paid for, which is something we should see.

Mr. Clougherty responded that is not what I am saying, Alderman.

Alderman Gatsas asked where is the appraisal. Does somebody have a copy of it now?

Mr. Clougherty answered I don't have it with me. The normal process, Alderman, again is for the staff to review the appraisal and have in hand both the appraisal and a written request from the purchaser so that we can compare those and provide information to the Committee. That is what we do. We are not deviating from that. What is a little bit different in this is perhaps the surplus property piece. If we want to be able to consummate a deal with JPA within the timeframe that they have to meet the federal requirements than it behooves us to perhaps move on two tracks here and get some of that surplus determination made. That does not commit the City, however, to going down that path.

Alderman Gatsas stated than you should explain to this Committee with your expertise what is the additional value to somebody for a tax transfer.

Mr. Clougherty responded we will explain that, Alderman. We will explain that as part of our recommendation to the Committee.

Alderman Gatsas stated my question is, Kevin, is if the appraisal comes in at let's say \$1 million and your tax calculation for somebody to do a tax transfer says it is worth \$2 million...

Mr. Clougherty interjected there is some benefit to them.

Alderman Gatsas stated so I guess until we see and I guess my question is one did Bramley...how did Bramley get chosen to do the appraisal. Was there an RFP put out for appraisers to bid? Also, I think you and I had the conversation two weeks ago at the Board meeting would he be here to answer questions if I asked and your answer to me at that time was yes.

Mr. Clougherty responded as I explained at that time that is the normal procedure and it was our expectation to have him here tonight. We just didn't get the information that we needed from both sides to be able to formulate a recommendation so it was premature and that is why he is not here tonight.

Alderman Gatsas replied then we should recess this meeting until everybody comes forward and we have the information before we deem something surplus that may not have a value that we think is considerably right for the City.

Mr. Clougherty stated again, Alderman, you are not declaring anything surplus tonight. All you are doing tonight is authorizing the appropriate staff and I think Alderman Porter raises a good point and whether that is the Assessors or not I

don't know and that will be sorted out with the Solicitor but you go through that process and you start it but you are not determining anything surplus tonight. That is all going to come back to you and before you would determine anything surplus you would have to have the financial information on what is being recommended by JPA and what is being recommended by the appraiser and what is recommended by the staff. That is how we did all of the other...

Alderman Gatsas interjected that is not the way we did the Center of New Hampshire. The Center of New Hampshire we didn't have a purchase and sales in front of us. We had the appraisal that we negotiated and then went out with a minimum bid.

Mr. Clougherty responded right but you had a recommendation from them in writing as to what they were looking for. It was the same process. I agree that there was not a purchase and sales at that point.

Alderman Gatsas stated this says authorization to initiate the surplus property declaration.

Mr. Clougherty replied right it says to initiate it. That is what we are talking about is starting the process so that...what happens is if you don't initiate the process and you wait to negotiate the deal you may not have time for the necessary staff to get that process completed and still meet the January 31 deadline that they have. So in order to accommodate them we are saying let's start that process, let them do the preliminary work understanding that you are not committed in any way...then it has to come back to you but at least they can get started doing that whereas if you wait until you want to make a determination to go forward or not we may not have time at that point and to move forward, even if it is just 30 days because again I want to remind the Committee that during December I think we are having one meeting.

Alderman Gatsas stated well I guess that is my question Kevin. We are not going to have the opportunity at this Committee level to ask those questions. I know what is going to happen. It is going to be referred to the full Board and the full Board is going to make a decision without this Committee. Are you saying no?

Mr. Clougherty replied our plan is to come back to the Committee and I think we have always come back to the Committee. That is the process.

Mr. Borek stated we will request a meeting when we have the information available.

Alderman Gatsas asked then why don't we recess until you get your information and the Chairman can call the meeting back to order.

Mr. Clougherty answered as long as we have the authorization to move with those three items so that we can keep going forward. If you want to recess until we have those...our intention tonight, Alderman, is not just to have this end by taking these three motions. It was always our expectation that we would follow the procedure and come back to the Committee at the soonest possible date. As I mentioned, we will try to meet with JPA next week. We have a couple of times that we scheduled out so as soon as we can possibly get back to the Committee we will do that.

Alderman Gatsas replied my understanding though is that they have the right of first refusal on anything that comes forward.

Mr. Clougherty responded right.

Alderman Gatsas stated now if we have another buyer that wants to come forward and if the appraisal says \$4 million and you work a deal at \$3.5 million and somebody wants to pay \$5 million we aren't being fair to the taxpayers of this City not allowing somebody to pay more for something and them having to match the high price. I don't know how we are negotiating something with somebody and not allowing somebody else to come in and purchase something that may get a higher price for the taxpayer.

Mr. Clougherty responded I don't disagree with you and I think the staff and everybody wants to make sure that all of the rights of the taxpayers are protected here. In the past what has been the practice has been to deal with abutters as we did with the garage down the street and in this case there are some special circumstances that as you mentioned deal with this particular proposal and we have to explain all of those. That is why we didn't want to come in tonight and rush through. We want to make sure that we have the time to explain to the Committee exactly what is being proposed, what the agreements in place are and how they work so that you can feel comfortable whether you go forward or not and understand what those issues are. I agree with you.

Chairman Thibault stated they have to come back to us, what is your issue.

Alderman Gatsas stated they have a copy of an appraisal out there...now if you want to go into executive session so that we as a Committee can take a look at that because of consultation with the City Finance Officer I don't have a problem with that but I don't want to vote to start a surplus determination and negotiation with somebody when we don't know what that appraisal says or how somebody determined the value of the appraisal.

Alderman Porter stated institutional memory can be a good or a bad thing. As I recall in dealing with the Center of NH back in 1982, 1983, and 1984 I think when this garage was built there were some contractual obligations and one of them, I believe, and I don't know the specificity of it but I believe the Center of NH and JPA have the right to buy it. If somebody came out of the blue and offered \$100 million for the parking garage, I believe that they would have the right to say no. I think what they are trying to do just so we get the playing field here, what they are trying to do is look at obviously what is in their best interest but by the same token I think they hold the cards as to what the City can do with that property right now. Do you know, Kevin, off-hand how many years is left on their option to exercise that purchase?

Mr. Clougherty stated I can defer to Tom but I believe it is like 40 years. I think there are two options.

Alderman Porter stated so we are dealing with a situation where they have the right to purchase that property and I think that we would all like to know what the value is, however, I think even in executive session if we go into executive session I think I will pick up *The Union Leader* tomorrow and find out exactly what occurred. I don't know who or what but somehow things get through to Mr. Yates. The other thing I would like to bring to mind is I think in this particular instance because we are in a year of a revaluation that it is somewhat mute to ask the Assessors to do an appraisal on that property because they are locked into the ratio. Steve Hamilton, the official ratio for the City of Manchester for 2004 is 57.1% correct?

Mr. Hamilton answered yes.

Alderman Porter stated if we use that as a reference point, the property would be worth approximately \$11.2 million. I am not saying that is accurate. If Mr. Hamilton comes in with an appraisal of something less than that then we are setting up the Board of Assessors and the City of Manchester for an application for abatement and if I were the owner of the property I would be in tomorrow morning. I don't think it does us any good to know necessarily what the value or what Mr. Bramley's appraisal is because it is either surplus or it is not and I think the owners of the Center of New Hampshire have come to the City with a bonafide request and as far as I am concerned they are simply requesting some time to do their due diligence to see what they may come up with. One of the problems is this as I see it. I don't know whether they are or are not doing their own independent appraisal but if the City's appraisal number were released and they came in with a higher number from their own appraiser we would never see the light of day of that appraisal. I think that at this point the value of that property



from a market point of view is irrelevant to whether it is surplus or not and I would like to go along with Alderman Roy's suggestion that we approve that number one item.

Alderman Roy stated I think everyone on this Committee is going in the same direction it is just looking at the road we are taking to get there. In my opinion, no property should be discussed for sale, no property should be appraised and no property should be entered into negotiations until this Committee determines it surplus. We have already gone ahead and had conversations because we do have a special relationship with JPA and the way that garage was built and the contract pre-dated a lot of us but we need to initiate the surplus property declaration to get the Planning Department's opinion and to get every one in the City government who is paid to protect the taxpayer's interest opinion on whether or not this is surplus. Just because JPA has language in a contract from years ago does not give them the right to get this property. We are starting the process to let everyone out there know this property is either surplus or not surplus, which means it can be sold to any party or it cannot be sold to any party and that is what the first motion of starting the surplus property declaration process, not determination, process is for. Let's find out if it is surplus. If it is, then we will look at every possible bid that comes along the way by screaming it from the rooftops and getting it to *The Union Leader* that we have determined it surplus or starting the process will let every buyer out there know, including JPA, whether or not they can go forward and that is the first motion that I put on the floor was to start a process, not a determination.

Alderman Porter moved the question.

Alderman Osborne asked this first right of refusal, can you elaborate a little bit on this as to what they have now on the contract. You say first right of refusal.

Mr. Clougherty answered under the terms and again I will defer to Tom but I will take the first crack at it is if some other party were to come in and offer you X dollars for the garage we have to inform JPA that an offer has been made to sell the garage for X and they have a chance to match that. That is what it is. It has been there and it is in the contract.

Alderman Osborne asked so they can offer what they want and purchase what they think it is worth and that is it.

Mr. Clougherty answered yes. Just to give a little more history, my understanding is that when we did an RFP and tried to sell the garage before that was one of the reasons why we did not get a lot of interest from other parties was because of

some of the language that Alderman Porter was talking about discouraged people from participating.

Chairman Thibault called for a vote on the motion to initiate the surplus property declaration. The motion carried with Alderman Gatsas being duly recorded in opposition.

Deputy City Clerk Johnson stated I will just note for the Committee that we discussed the Assessors giving a report for the surplus declaration. The surplus ordinance does also provide that if the Committee orders an outside appraisal at the recommendation of the Board of Assessors then the Board of Assessors does not have to submit a separate report so if the Board of Assessors is prepared to make that recommendation to the Committee, the Committee could move for an outside appraisal, which has already been done as I understand it.

Mr. Hamilton stated the Assessors would recommend and we may have already recommended an outside appraisal.

Alderman Porter, Steve, you said the Board of Assessors may or may not have. Can you explain that? You don't know whether you have or you haven't?

Deputy City Clerk Johnson stated it came to the Board earlier but not the Committee.

Alderman Porter asked did you or didn't you recommend it.

Mr. Clougherty answered the recommendation to do the appraisal was a Committee recommendation of the staff. Steve Tellier was involved in that.

Mr. Hamilton stated I wasn't at that meeting.

Alderman Porter stated it is the Board but when you say the Board may or may not have I think we need more definition than that. I think that it has been clear that it did go outside. I think the Board of Assessors has been, in essence, removed from the process and I have no problem with that.

Mr. Clougherty stated I wrote the letter, Alderman, to the Board asking for the authorization to do it for the dollars but we had talked to the Assessors and the other staff and everybody conferred that it was the right way to go.

Alderman Roy moved to allow staff – Finance Department and Paul Borek to enter into negotiations with JPA Corporation to develop an acceptable purchase

price. As the second part of that, which is varying from the letter, and report any other offers that come in on that property to this Committee.

Alderman Osborne stated I am willing to go along with 1 and 3 but I think item 2 should be negotiated after we go through the process of 1 and 3.

Chairman Thibault stated you can vote for it or against it if you want.

Alderman Gatsas stated I think, Alderman Roy, that you just gave me a dissertation a little while ago on if we are looking to protect the best interest of the taxpayers of this City that we would allow them to clear something or go through the declaration process but this is actually saying to negotiate...are you also telling them to negotiate with any other bidder that comes in or are you just telling them to negotiate with JPA. So another bidder coming in doesn't make any difference and I think that is not a fair issue for this Board to tell anybody to negotiate anything until we have come out and determined a sales price. I think that is wrong. I don't think it is fair to the taxpayer and I think the taxpayer...we have a fiduciary agreement with them and that is what we should be standing behind – that fiduciary agreement and we shouldn't be authorizing anybody to negotiate anything until we see what those prices are because we may deem a \$1 million as not surplus and we should hold on to it.

Alderman Roy responded I agree with you 110% but we do have a contract and we do have an expression of interest to purchase a property that they have a contract agreement...

Alderman Gatsas interjected have you seen that contract.

Alderman Roy stated I am going on what I have been told for the past two years from Finance.

Alderman Gatsas asked the one that just came in. Have you seen the one they got?

Alderman Roy answered no nothing recently.

Mr. Clougherty stated I think he is talking about the existing contract, Alderman.

Alderman Roy stated the existing contract with the Center of New Hampshire that helped the failed purchase from years ago. We cannot know what JPA is willing to do until we enter some type of discussion. What I am adding to that is I am opening the door for any other potential buyers to enter into or show interest in that property and get it reported back to this Board. There may be one in JPA or there may be 30. We don't know that unless we request it from the staff. What I

am saying is let's go forward with the process, find out what the sales price is, not authorize the sale but find out what the sales price is, have it come back to us and then this Committee can make the best decision for the people we do have a fiduciary responsibility to.

Alderman Porter stated I agree with Alderman Gatsas on the second part of this. I think that JPA is in the process of completing their own valuation and preparing an offer. I would approve entering into negotiations once they have tended their offer but not before.

Chairman Thibault stated as far as I know they have. They just haven't had a chance to look at it.

Mr. Borek stated we got that this afternoon. At the time that this memo was prepared we had not received the offer. We did receive an offer in the middle of the afternoon.

Mr. Clougherty stated part of what has to happen, Alderman, as you know is as Paul said he got a letter from them this afternoon but we need to be able to, and maybe negotiate isn't the right word, but we need to be able to talk to them and understand what is in their proposal and how that works and what they are trying to accomplish and how they have arrived at their number. We are trying to get those clarifications so that we can come back to the Committee and make an explanation and say this is what they are proposing, this is what it consists of, this is how it matches up against the appraisal.

Alderman Porter stated I wasn't aware they made an offer.

Alderman Gatsas stated I am totally confused by how this Board of elected officials have no understanding of 1) what a purchase price is or what the appraisal price is; 2) what offer is before staff members of this City because the last I knew none of you were elected and I would assume that before we move forward as a Committee those are answers we should have. You are asking us to make commitments to things and you have an appraisal before you that we haven't seen and you have a contract before you or a purchase and sales agreement or an offer and we haven't seen it. Now you are just coming in and saying we as a City employee should be able to develop an acceptable purchase price. That acceptable purchase price before we have an understanding of what that appraisal was, what was contained within that appraisal, why an appraiser made that determination of value...I don't care how long their lease is and I don't care how long their option is. We, as elected officials, should have the ability to see that information before we give you carte blanche to go out and do what you want to do and I am not

worried about it because whatever you come back with I will assume that is a good deal.

Mr. Clougherty replied we are just following the normal processes for us to collect information, meet with the purchasers and try to get the best possible dollars to bring back before the Committee. That has been the process.

Chairman Thibault stated they are going to come back to the Committee with all of the information.

Alderman Gatsas stated if that appraisal came in at \$1 million and I don't know, Kevin, you sure probably can tell me off the top of your head. The last time I remember did we owe \$2.5 million on that garage or a little less or a little more?

Mr. Clougherty responded I don't think we owe anything on it. It has almost run its course.

Alderman Gatsas asked it is debt free. When you say just about is it \$1 million or less?

Mr. Clougherty stated less than \$500,000.

Alderman Gatsas stated let's assume it is \$300,000 and somebody came in with \$1 million we would assume we were getting \$1 million but that is not the case. There is \$300,000 worth of debt. We probably as a Board would say it doesn't make sense to sell it at that appraised value.

Mr. Clougherty replied I agree, Alderman, but that is why we need to have the time as a staff to pull together all of that information so that you have it in front of you.

Alderman Gatsas responded well then we shouldn't be declaring anything until we have that information before us because we are starting down a road today that says we should sell this as surplus.

Mr. Clougherty replied no Alderman you are starting down a road that says that you may consider selling something as surplus if, in fact, you think that is the right thing to do as a policy regarding the use of the building and that you feel that the price that is being offered is, in fact, something reasonable that you want to accept.

Alderman Gatsas stated and no businessman would ever make that business decision without having everything in front of him.

Mr. Clougherty responded we wouldn't ask you to do that.

Alderman Gatsas replied you are doing it now.

Mr. Clougherty responded no we are not. We are asking you to give us the opportunity to go out and pull together that information.

Alderman Gatsas asked do you have an appraisal.

Mr. Clougherty answered yes.

Alderman Gatsas asked do you have an offer.

Mr. Clougherty answered to be honest with you I haven't even...we have a letter that I haven't even read. I haven't had a chance to even look at it. It came in late this afternoon.

Alderman Gatsas stated so you are asking us to make decisions based on two pieces of information that you have that none of us on this Committee have seen. I don't think that is fair to ask us.

Mr. Clougherty responded that is not what I am asking you. If I was coming in and asking you to go ahead and sell this tonight for a particular amount that would be one thing. That is not what we are asking. We are saying the normal process and again this is the way it has been in the past is that you allow your staff to collect the information on what the value is of the building, what the utilization of the building is, what is being offered by the counter party and giving you some idea as to how that stacks up in terms of a reasonable offer and then we can explain that to the Committee and then you ultimately have to make that decision. It may be when we bring in our recommendations that you will say we want you to look at this or we want to go that way. We have done that in the past to but the initial piece is to allow for the staff to at least take a first pass at trying to pull together all of that information.

Alderman Roy moved to authorize city staff to enter into negotiations with JPA Corporation to develop an acceptable purchase price and also to report back any potential purchasers to this Committee.

Deputy City Clerk Johnson asked could we just clarify who the staff is for negotiation purposes.

Mr. Clougherty stated it would come through Paul Borek.

Deputy City Clerk Johnson asked could we identify all of the staff that is supposed to be part of that.

Alderman Roy stated if you want to interject Paul Borek after authorize.

Mr. Clougherty stated typically it is the City Solicitor's Office, our office has been involved, the Assessors have been involved as needed, Planning is involved for obvious reasons and Paul draws on...in the past it has been Jay that would draw on whatever staff he needed to pull together the information.

Chairman Thibault stated why don't we just leave it as appropriate staff.

Alderman Roy stated that is fine with me. If the Clerk needs a lead person we will put it as Paul. If not, it is just appropriate staff working with Paul Borek.

There was no second.

Alderman Porter stated that leads to Item 3. I am not sure how they would have made an offer and after the offer is made they want to conduct a physical analysis, which I think is common sense. I would have thought that that would have been done prior to an offer being made.

Mr. Clougherty responded I don't disagree, Alderman, and that is one of the reasons we said we want to have the authorization to go back and talk to them so that we understand what they are asking.

Alderman Porter stated but an offer has been made. They must have contingencies in that offer subject to this, that...they must have about 30 different contingencies and I think at this point that may be relevant as far as this Committee. I don't think any of this is appropriate for determining whether it is surplus or not. It either is or it isn't surplus. The price of it is not, to me, relevant to whether it is surplus. If it is surplus and I think that we have looked at parking garages in the past, the new study notwithstanding, and we have determined that some of these may be better off being sold. I guess the third portion that they want to do all of these things after they made an offer so they must have made contingencies that they could change their offer subject to all of these.

Mr. Clougherty stated again Alderman that is why as a staff we are reluctant to come to you tonight and say...we need to go back and clarify these items with them and get a final number from them that we can bring before the Committee otherwise that is why we needed the second item. At that point if the staff doesn't have the authorization to talk to them and negotiate or whatever, what do you want us to do?

Alderman Porter responded I will not vote to authorize negotiations but I certainly would authorize that they do their due diligence and then make an offer.

Mr. Clougherty asked so on Item 3 that they have the right to go in under the supervision of the Highway Department.

Alderman Porter answered yes so if Alderman Roy wants to make that...are we through with Item 2.

Alderman Roy stated we are still discussing Item 2 if possible. Kevin, if we don't enter into some form of negotiation with JPA and/or anyone else that may or may not want to purchase this garage then I assume the appraisal gets sealed, their offer gets sealed, we wait until the surplus determination or at some other point that this Board changes their mind and decides to go forward with looking at what someone would offer on this property?

Mr. Clougherty responded I will defer to the Solicitor. I know the process that we followed. If you want to do something different than that...

Alderman Roy interjected we have a situation where we are looking at whether or not it is surplus and in agreeing with Alderman Gatsas if we don't know the purchase value or what the offer is or the appraised value or what an acceptable number from both sides would be, then that has a lot to do with whether or not this Aldermen would vote if it is in the best interest of the constituent. So, without Item 2, Item 1 is almost a moot point to me because if the acceptable price on their side is \$10 we are not selling the building whether it is determined by every department head to be surplus. So, I don't see where we can separate these from a sales standpoint or a real estate standpoint.

Mr. Clougherty stated you can understand the dilemma that was as a staff are in because we have something that came in this afternoon that as Alderman Porter characterized has a lot of contingencies on it so what is the number. What we are asking for tonight is authorization from the Committee to go back with them to try and help flush out what that number is understanding that they are going to have to go back and one of their requests is to take a look at the condition of the building itself, which I think is appropriate and we have allowed people to do that in the past as well.

Alderman Gatsas moved to enter into non-public session to see what the appraisal and the offer is with consultant with the Economic Development Director and Finance Officer. Alderman Osborne duly seconded the motion.



Deputy City Clerk Johnson stated we would require a roll call vote for that and I actually have to quote the RSA, which would be 91-A:3(II)(d).

Chairman Thibault called for a roll call vote. Aldermen Thibault, Gatsas, and Osborne voted yea. Aldermen Roy and Porter voted nay. The motion carried.

On motion of Alderman Gatsas, duly seconded by Alderman Osborne it was voted to exit non-public session.

Alderman Roy moved to authorize Paul Borek and city staff to enter into negotiations with JPA Corporation to develop an acceptable purchase price and also entertain any offers from any other buyers and bring them back to this Committee at the same time as they bring back the information on the purchase price. Alderman Porter duly seconded the motion. Chairman Thibault called for a vote. The motion carried with Aldermen Gatsas and Osborne duly recorded in opposition.

Deputy City Clerk asked did you want to deal with the third item that was requested.

Alderman Roy moved to authorize JPA to conduct a physical analysis of the Center of NH Parking Garage under the supervision of the Highway Department including, but not limited to, examine the depth, nature and condition of the concrete structure, foundations and footings and that JPA indemnifies the City. Alderman Porter duly seconded the motion.

Alderman Gatsas asked are you proposing that anybody else that is bringing forth an offer have that same ability for due diligence.

Alderman Roy answered I think I someone came forward staff should bring it to this Committee and we may authorize that.

Alderman Gatsas asked so you are not giving them the same authority as what you are telling staff to take a look at those acceptable offers because if we don't allow them to do their due diligence we could be delaying the purchase if there was some other due diligence that would be acceptable. So are you allowing everybody to do their due diligence if they have interest in that garage or is it just specific to JPA?

Alderman Roy answered at this time, Alderman Gatsas, there is only one offer on the table that I am aware of and I am making the motion to authorize that person to go forward. If someone else comes in with an offer and comes to this Committee

and we deem it acceptable or reliable or in the best use of the property then I would definitely give them the opportunity as well.

Chairman Thibault called for a vote. The motion carried with Aldermen Gatsas and Osborne being duly recorded in opposition.

Chairman Thibault addressed Item 4 of the agenda:

Communication from Paul J. Borek, Economic Development Director, regarding the Ash Street School property on Bridge Street.

Deputy City Clerk Johnson stated it is my understanding that the item is going before the School Board's Building & Sites Committee with a recommendation anticipated before the full School Board on December 12.

On motion of Alderman Osborne, duly seconded by Alderman Gatsas it was voted to table this item.

Chairman Thibault addressed Item 5 of the agenda:

Communication from City Solicitor Clark enclosing a communication from the State of NH Department of Transportation requesting to purchase city land for the proposed Manchester Airport Access Road.

Deputy City Clerk Johnson stated just as a note we would have to put this through the same process. It needs to be declared surplus and we need reports from the appropriate parties by ordinance.

Kevin Dillon, Airport Director, stated regarding this parcel it is important to note that this is just one parcel of many that the State has approached the City on. The majority of the property that they are asking for is Airport property. I believe that of the roughly 10 parcels that they are requesting, 2 are owned outright by the City. My recommendation because as I said a majority of this property is Airport property is to refer it to the Airport to gather the appropriate information, go through the surplus process and handle the negotiation with the State on behalf of the City. There is a requirement that we do have for the Airport parcels that we have to follow the Federal Aviation Administration process that requires a number of releases to be obtained as well as a very formalized appraisal process that we have to go through.

Alderman Gatsas asked so what you are suggesting is that the Airport will do the due diligence and collect the data on the value of these properties and report back to us.

Mr. Dillon answered that is correct.

Alderman Gatsas asked on the Airport's dime.

Mr. Dillon answered that is correct.

Deputy City Clerk Johnson asked can I just clarify one thing because I don't want questions coming up a month from now and then we can't do what somebody wants to do. It is my understanding that the Airport is going to do the values of the property. Is it also your intent to do separate appraisals of the property because if so we should get a request from the Board of Assessors for outside appraisals by the Airport.

Mr. Dillon stated I believe it is the Airport's intention to do outside appraisals. That is the process we need to go through from the FAA and it would just make sense to include all of the parcels in that.

Deputy City Clerk Johnson stated my suggestion would be first that the Board of Assessors request an outside appraisal be done to the Committee and the Committee so order it to be done and conducted through the Airport.

Mr. Hamilton stated the Assessors request that an outside appraisal be done through the Airport.

On motion of Alderman Gatsas, duly seconded by Alderman Osborne it was voted to accept the recommendation of the Board of Assessors to seek an outside appraisal through the Airport.

Deputy City Clerk Johnson stated now I believe you would need a motion to refer it to the Airport to report back to the Committee and we will also ask for reports from Planning and Tax.

On motion of Alderman Roy, duly seconded by Alderman Osborne it was voted to refer this item to the Airport and have them report back to the Committee and have the City Clerk requested reports from Planning and Tax to determine whether or not the property is surplus to City needs.

Chairman Thibault addressed Item 6 of the agenda:

Communication from Richard Exline requesting the conveyance of Parcel "A" and termination of an access easement at 1832 Candia Road.

Alderman Porter stated this was received and filed back awhile ago, however, there has been new information. I think the Parks & Recreation Commission and Director Ludwig have determined that for their purposes it may be deemed surplus.

Alderman Porter moved to initiate the process to sell this property to Mr. Exline. I have reviewed the property on a number of different occasions and in my opinion it is really of no use to Parks & Recreation and I don't believe the City of Manchester has any real practical use for it either so I move to sell it to Mr. Exline.

Chairman Thibault stated I believe Highway has also...

Alderman Porter interjected yes they have no interest at this point.

Deputy City Clerk Johnson stated we would just advise that the ordinance does require that we put it through the process and we will request the proper reports and bring it back to the Committee at its next meeting at which time it can be declared surplus. I am not sure if it is tax-deeded property or not. If it is then it will require an ordinance to process it in the end but we will prepare all of that.

Alderman Roy duly seconded the motion.

Alderman Roy asked Mr. Exline to come forward. The property itself, the comment of unbankability, when you purchased this was there a title search. Part of this is to try to determine...

Richard Exline, 1832 Candia Road, Manchester stated I can explain it thoroughly. I retained Richard Thorner from Wadleigh, Starr & Peters. I paid him to do a title search and to look out for my best interest on this property. He failed. I filed suit against him. I have filed a complaint with the Professional Conduct Committee for the State of New Hampshire for that and other various complaints. I also want to make it clear that whether I bought the property or not, this problem existed. It may not be me; it could have been somebody else. I have spent a tremendous amount of money on engineering to try and rectify Atty. Thorner's issues but my main thing here is I am looking for a little help to try and get this done and bring the value of the property to where it should be. Having a right-of-way over it impedes it. It squares it out. The property as you have all gotten a blueprint shows that I have done due diligence and acted in good faith trying to meet the Highway Department's list of requirements. I have also been working with Parks & Recreation. I am just looking for favorable treatment on it to just rectify a problem. I can't sell it. I can't get a remortgage on it. It all happened and I do

happen to have a mortgage on it but I am concerned that if my mortgage company found out they would call the note. I have spent almost as much money on the property trying to rectify the problems as I paid for it. I am just here to do the right thing. I have acted, I think, in the City's best interest because they established a survey there and it does show some discrepancies with sheds and other areas. My shed was built in 1975 long before I was there and the right-of-way goes through it. The shed sits on three pieces of land, City land, my land and my neighbor's land and I have worked with my neighbor to see what we can do there. We are looking to square it up and from favorable treatment from the Committee and the Board of Mayor and Aldermen.

Alderman Gatsas stated there is a letter here from the Highway Department dated September 6, 2004. Have those conditions been met?

Mr. Exline responded they have and I have a Highway Department letter right here that states...I brought enough copies I believe for everyone to take a look at if you would like.

Deputy Clerk Johnson stated Mr. Exline has submitted one letter that he does have copies of.

Alderman Gatsas stated it says they don't have a problem but I am looking at the letter of the sixth and he was never addressing the problem but that he thought he was going to subject the City's land that is in the back to some problems with his access on Candia Road. Isn't that what I am reading in his letter?

Mr. Exline asked which letter.

Alderman Gatsas answered the letter of December 16 from the Highway Department. In his third bullet point it says, "there appears to be only two access points to the city's land. The 20' access from Candia Road subject to this proposal would be eliminated. The second access is a 20' unimproved strip of land next to 109 Groveland Avenue. The validity of the Groveland Avenue access point should be assessed as it is not referenced in the City deed.

Mr. Exline stated I have brought Joe Wichert here who surveyed it. He is one of the surveyors and can address that but also my letter to Lands & Buildings, I think on Page 2 halfway down, I go into detail about this. Joe can address any of your land survey questions.

Alderman Gatsas responded I am not really concerned with what Joe's opinion is. I am concerned with what the Highway's opinion is. It is pretty clear what they

say here. Unless someone from the Highway Department is here to change their opinion.

Mr. Exline asked can you clarify in a little more detail exactly what you are looking for. We might have the answer.

Chairman Thibault asked Mr. MacKenzie would have an answer to that as far as the Highway Department problem.

Robert MacKenzie, Planning Director, answered no.

Deputy City Clerk Johnson stated I believe what I was indicating is that part of the process is to get a report from Planning and Planning normally would converse with Highway and other departments. Any of the issues that are still arising out of those departments would come through in his report, which has to be gotten before any action can be taken anyway.

Joe Wichert stated at the time the original December memo from the Highway Department was prepared, one of the things the Highway Department wasn't taking into account was the City actually owns an additional four or five pieces that have access out to Groveland Avenue, which would give the City property through access. If you look on the abutter's list of the plan that we are showing, those lots would consist of Lots 20, 18A, 16 and 12 on Tax Map 492. So we had talked to the Highway Department. Their original concern was if they eliminate this one 20' easement onto Candia Road they would be possibly landlocking this parcel. Between the 20' strip that is mentioned in the December memo and the additional pieces of property that the City owns that front on Groveland, I don't believe that is an issue at this point in time.

Alderman Gatsas stated so what you are saying to me is that if the City sells that to an industrial user who wants to use trucks that department from Groveland Avenue you don't think the residents of Groveland Avenue are going to have a problem where this is an access to Candia Road.

Mr. Wichert responded no Alderman. What I was saying was that what the Highway Department asked for we resolved with that one issue.

Alderman Gatsas asked what is the zoning of the City land behind it. Industrial?

Chairman Thibault asked, Bob, would it be right for you to check with Highway and for us to come up with a decision on this before our next BMA meeting.

Alderman Porter stated I think that the letter that Alderman Gatsas is referring to was in December. We now have a letter of August 2005 that says the Highway Department has no objection to the sale of the City property. Whatever their concerns were have already been addressed. They have responded. I don't see any reason to pursue this further and I would like to move the question.

Deputy City Clerk Johnson stated the ordinance provides that you have to receive those reports. You cannot simply take the action that Alderman Porter is requesting.

Alderman Porter stated the initial motion was to start the process.

Deputy City Clerk Johnson stated my suggestion is that you allow the Clerk to put this through the process and we will request the departments to come back on December 6 to a Committee on Lands and Buildings meeting so we can initiate the reports out to the Board that night.

Alderman Porter stated with the purpose of selling it to Mr. Exline.

Chairman Thibault called for a vote on the motion to have the Clerk put this through the process and have the departments come back with their recommendations to the Lands and Buildings Committee. There being none opposed, the motion carried.

Chairman Thibault addressed Item 7 of the agenda:

Communication from Thomas Bowen, Water Works Director, advising of a request from Dick Anagnost of Anagnost Companies, Inc. and Dick Dunfey of MHRA to purchase 16+/- acres of property at fair market value on Karatzas Avenue for the purpose of constructing additional "workforce housing".

*(Note: Communications from Robert MacKenzie, Planning Director and Ron Ludwig, Parks & Recreation and Cemetery Director attached. The Committee voted on 8/29/2005 to authorize Water Works to enter into an agreement with Anagnost Companies and MHRA subject to both the Committee and the full Board finding the land surplus to City needs and agreeing on a purchase price.)*

On motion of Alderman Gatsas, duly seconded by Alderman Porter it was voted to table this item.

## **TABLED ITEMS**

8. Communication from Attorney Michael Kasten, on behalf of Steve and Anna Sacco, proposing to enter into a Boundary Line Agreement with the City for property located at West Shore Avenue and Bodwell Road abutting Crystal Lake.

*(Note: Tabled 4/18/2005 pending review by Alderman DeVries.)*

This item remained on the table.

9. Discussion of area for dog park.

*(Note: Tabled 4/18/2005 pending submission of formal layout for the dog park and lease agreement.)*

This item remained on the table.

10. Communication from Robert MacKenzie, Director of Planning, relative to the Blacksmith Shop on Second Street.

*(Note: Tabled 11/15/2005 pending further review by the CIP Committee.)*

This item remained on the table.

11. Communication from Russel Johnson, PSNH, seeking authorization to place a padmount transformer and cement slab (8' x 8') approximately five (5) feet from the back of the Visitors Center at Veterans Park.

*(Note: Tabled 7/19/2005 at the request of PSNH pending further discussions with Intown Manchester.)*

This item remained on the table.

12. Communication from Gerald Hebert, Sr., requesting to purchase Lots 246-3, 6 & 7 on Page Street between London and Bridge Streets.

*(Note: Tabled 7/19/2005 pending additional information from the Board of Assessors and Planning Department.)*

This item remained on the table.

There being no further business, on motion of Alderman Gatsas, duly seconded by Alderman Porter it was voted to adjourn.

A True Record. Attest.

Clerk of Committee